Human Rights and Labor Migration Issues:
Learning from the Auto Industry for Treaty Optimization

Erskine Pontius

1. Introduction

Human rights and labor migration issues have long been subject of dilemmas and influenced by limited assumptions about organization and management. Despite many efforts and initiatives to promote human rights protection, numerous problems persist. Inequalities, biases and prejudices refuse to fade away. Moreover, new forms of barriers, which are subtler and more complex, make it more difficult to get lasting results. Institutions and organizations are failing to adequately address those challenges.

Indeed, policy makers, organizations as well as the civil society keep trying to bring states into compliance with existing norms, change bad practices to promote more rights protection in labor migration to no avail. Enhancing more inclusion, diversity and equality, improving working conditions, reducing power asymmetries and fighting against discrimination have never been as complicated as they are today in this world affected by globalization and changes of all kinds.

Several studies show that international law is not at its best, and the number of issues it has to deal with is increasing. International migration in particular will still be under debate in the future, as well as the concerns related to human rights protection. If the adequate instruments are not ratified and complied with, it will raise a number of problems. International migration has long been a key component of population growth for many countries, mostly the very developed ones but also less developed ones. Even though what the experts call the volatility of international flows does not allow an absolutely accurate projection, no change in the foreseeable future is expected since birth rate is still very low in developed countries.

Indeed, the Department of Economic and Social Affairs of the United Nations (2004), in their world economic and social survey about international migration, revealed that the population projections to 2050 showed the possibility for the population in developed countries to decline from 1.2 billion to 1 billion between 2000 and 2050 without migration. In Northern America, the population is expected to decline by 2 million but with migration it could increase by 134 million. Without migration, Europe would be affected by the decline of its population by 139 million. Many countries are considering filling this gap in their population and work force with robots and automation. However, whether they bring robots in or not, we will still have to deal with robots’ rights or human versus robots’ rights, the international instruments needed will still be relevant and human rights will require even more protection.

International law has seen the creation of many treaties related to a myriad of matters and vulnerable
groups. They will probably come up with some more treaties besides the current bilateral and multilateral ones. They cannot do so in a vacuum and keep complaining that states refuse to follow existing treaties, and other related concerns.

According to Burgstaller (2005), because compliance is one of the most central questions in international law, the failure to deal efficiently with it is troubling. If it really matters, international law has to be able to influence the behaviors of the actors; the difficulty to accurately capture why states and other subjects of international law obey international law in some cases and refuse to do so in some other cases undermines the foundations of the international legal system (Burgstaller, 2005). Burgstaller added that without an understanding of the connection between law and behavior, an explanation of the very function of the international legal system is missing, and that as a consequence, we will not be well-equipped enough to explain and predict the impact of the 50,000 or so international agreements in force (Burgstaller, 2005).

Legal scholars want to keep the legal process movement alive. They assert that the legitimacy of the law does not rest only on the process but also on the normative content: law-making is “not merely the rubberstamping of a pluralistic political process but a process of value-creation in which courts, agencies, and the people engage in a process of democratic dialogue” (Koh, 1996). Thus, the normative content is of prime importance, and law-making is a process of value creation, but it involves much more than mere dialogues leading occasionally to empty promises. Sometimes, the authors focus on only the impacts of the norms, sometimes on only the dialogue process or only state behaviors. There is a need for a combination of the impacts on the norms, dialogue process and state behaviors to see the big picture and understand better.

This article aims to re-orient the focus attempting to draw attention on a neglected aspect of international law. Trying to capture the principles and ideas that can be used to produce optimal treaties from a product management and marketing perspective, it explores different and maybe unfamiliar grounds and perspectives on what we already know about human rights and labor migration issues. It considers the development of different mechanisms, norms, resources and capabilities and tries to answer the following question: How can treaties be optimized to better address human rights and labor migration issues? The results and finding are expected to contribute to capability-building of international organizations.

2. Literature review

The debates related to human rights and labor migration issues tend to focus extensively on the lack of compliance with the key treaties. The literature is particularly abundant with theories trying to explain why states do not comply or when and why they comply. As Burgstaller puts it, each theory of compliance borrowed elements from various philosophical backgrounds. Moreover, several other factors or disciplines, such as international relations, sociology influence authors writing on compliance. However, there are three basic model of compliance (Burgstaller, 2005): realist, institutionalist and normative approaches.

The realist theories suggest that states behavior is dependent on strategic incentives. They are concerned with their national interest. The realist theories draw on the philosophical tradition, including Hobbesian, rationalistic and utilitarian traditions, which argued also that states follow international law when it serves their self-interest to do so.

Koh (1999) noted that rationalist theories considered compliance as an instrumental computation, and that self-interest explanations do not consider the important factor of vertical internationalization of international
norms into domestic legal systems. For Chayes and Chayes (1993), the analysis of the realists based on the arguments related to military and economic power maintenance are not really helpful in improving compliance, which becomes a matter of manipulation of burdens and benefits, implying the application of military and economic sanctions.

The institutionalist theories on their side, share the view of the neorealist, which is the last variant of the realist theories. They take a game theory approach to study the international system and they view states as rational actors interacting in a kind of anarchical world. They believe that states combine to create institutions which can make rules that affect state’s behavior (Burgstaller, 2005). The norms created influence states because they form part of an entire regime, including institutions creating and implementing them (Burgstaller, 2005). Such institutions can enhance compliance with international agreements in many ways.

The last approach is the normative theories which state that norms influence and induce state's behavior. They assert that states generally obey international law guided by a sense of moral and ethical obligation that are based on natural law and justice considerations. Burgstaller saw the theory of transnational legal process of Harold Koh as a variant of the normative theory and institutionalist theories.

Koh advocates a theory of transnational legal process, which can allow according to him the internal acceptance of international norms by states so that they can be more motivated to obey international human rights law and not comply or conform depending on their convenience. Such a theory claims to capture how the international norms are enforced throughout history and goes beyond the conventional horizontal process of international human rights enforcements by exploring also a vertical dimension of it, which is the intervention of “transnational norms entrepreneurs”.

Transnational entrepreneurs can be individuals as well as private or international transnational organizations who mobilize public opinion and public support both at the national and international level for the development of universal human rights norms. They also participate in the interpretation of those norms in particular circumstances, and national governments should internalize such norms interpretations into domestic and political structures. In short, the transnational legal process is about how law influences nations and why they obey; it considers on one side how international actors shape laws through their interactions and on the other how laws shape future interactions.

Geisinger and Stein (2007), with the concern to improve regime design, provided a model called theory of expressive international law that follows similar ideas as Goodman and Jinks who themselves tried to move forward with Koh’s ideas. Since it also explores the influence of surrounding environment. In their theory, Geisinger and Stein argued that states change their behaviour because of their desire to be part of the international community; international society is then seen as a pull that influences their behavior. They developed a theory to understand “the forces behind treaty creation and compliance” to paraphrase Geisinger and Stein.

They asserted that the well-designed law can push individuals to change their behaviour by inducing them to change their taste through internalization or by nourishing fears of social sanctions. They found that two factors influence an individual's decision to behave a particular way. The first is the attitude of the individual toward the behavior itself and the second is the beliefs about what other people think of the behavior. Geisinger and Stein (2007) argued that ratification has impacts on several beliefs about norms and therefore affects compliance. Thus, changing belief about the reality can lead to changing beliefs about the norms which refer to
the aggregated preferences of members of the group of states to which that state belongs.

Burgstaller also saw the approach of Chayes and Chayes as another a variant of the normative one with ideas borrowed from institutionalist theory. He therefore categorized it as an institutionalist-process based approach in which compliance is explained by the interaction of states within institutions (Burgstaller, 2005). Other authors qualified the Chayeses approach as a managerial one. The instruments of active management, to repeat Chayes and Chayes, are capacity building, dispute settlement, and the adaptation and modification of treaty norms. They argued that these are useful in bringing compliance to complex and difficult treaty obligations. However, they did not study how to reach well-designed treaties; and when they address capacity building, it is only about how to empower state to comply. This article explores other aspects of capacity-building and problem-solving.

Chayes and Chayes argued that the enforcement model, usually prescribed to face non-compliance problems with its sanctions, could not be utilized as a routine for treaty enforcement but rather what they called a managerial model relying more on a problem-solving approach, and that more cooperation would be more effective. Underlying the need for a well-designed treaty-making system, they asserted that some could be umbrella agreements to build consensus on more specific later regulations and create international organizations to watch them.

Chayes and Chayes argued that for the treaty regime to endure and stand over time it has to be adaptable with inevitable changes in technology and environment, and that a management strategy should be designed to foresee and bring the required changes. A review and assessment process, with a reporting system among other things, is, according to Chayes and Chayes, a vehicle for bringing together compliance measures and instruments in a single coherent compliance strategy which is compelling, dynamic, and improves performance. Reporting, however, is a big challenge for international organizations.

This paper explores tools and strategies to improve the experience with the reporting system; and with product management, it goes further into the analysis for the treaty regime to endure and anticipate changes in the future. In addition, to meet the need for well-designed treaties this article makes the scanning of their internal and external structure possible. This article on treaty optimization fits into the theories on regime design improvement, transnational legal process and managerial approaches to international law.

Besides, for Burgstaller, a model of compliance in which international law matters has to take into account how the existence of law changes national behavior; it should explain both compliance with and breaches to international law. His assessment led him to the conclusion that the overall weakness of the theories of compliance is that they built around grand structures of the international system, normative pulls or organizational dynamics. He noticed that they failed to view the law ultimately as a process of communication among decision makers, a transmission of norms from prescriber to target. The result is, according to Burgstaller, they tend to neglect to consider the synapses between the individuals who invoke the norm and those who decide on compliance with it.

This article argues that these considerations of Burgstaller only constitute one part of the coin. First, all these theories take a behavioral approach, which is limited in terms of product development policy, in our case, treaty development policy. Second, Burgstaller does not address how to approach the issues he raised. He merely brought the issues to the table and signaled the need for further research, different approaches and perspectives. An optimal treaty management approach not only allows the considerations of such issues
and concerns raised by Burgstaller but also provide a bigger picture of the situation and widen the horizons. Third, the optimal treaty development approach includes ratification to the list, considering it as a goal that should still be pursued. Some other authors argue on their side that ratification does not matter because the international standards can serve as a reference to influence nonbinding legal processes, to codify the human rights discourse, and to contribute to the development of best practices (Ruhs, 2013). However, despite these positive impacts of the conventions whether or not they are ratified, non-ratification is an impediment to the applicability and the effectiveness of the Convention on the Protection of the Rights of Migrant Workers (Ruhs, 2013).

It is true that there is no international police force able to enforce the observance of laws by states and no international court that has compulsory jurisdiction over states, but compliance with the principles and rules of conduct of international law whose existence are accepted by states is accepted as obligatory (Jayawickrama, 2002). Moreover, Article 38 of the statute of the International Court of Justice requires that the Court must settle a dispute submitted to it in accordance with international law; this applies to, among other thing, international conventions, generally or in particular establishing the rules expressly recognized by the contesting parties. To become formal sources of contemporary international law treaties or international conventions have to be recognized officially by the states, which means that they have to have previously expressed their consent to be bound by the treaty whose terms should be performed in good faith. For the court to have a prima facie case, the parties should have previously ratified the convention and its protocol authorizing the competence of the court to settle the dispute. Most of the countries that have ratified the UN Convention on Migrant Workers of 1990 made reservations and excluded Article 92 (1) (Ruhs, 2013).

Article 92 (1) states that any dispute between state parties regarding the interpretation or application of the present convention that cannot be resolved by negotiations shall be submitted to the arbitration, and if arbitration does not work, they shall submit the dispute to the International Court of Justice in conformity with the court statute. Unfortunately, paragraph 2 of the same article gives them the possibility to make reservation on paragraph 1. The result is that most of the states did not hesitate to exercise this reservation prerogative and Article 92.1 was the one to suffer the most from it.

Ruhs (2013) argued that the main reason behind the failure of existing international conventions to obtain ratification in order to more effectively protect migrants' rights resides in the instrumental roles of rights in shaping the impacts of migration for the receiving countries. He contended that the key factor widely accepted among the analysts was the one of national interests perceived and politics of states. For example, empirical studies showed that the perceived cost of granting specific rights to migrant workers was a major impediment to the ratification of the Convention on the Rights of Migrant Workers of 1990.

Ruhs explained that national policy makers decide on the regulation of the admission and rights of migrants in order to achieve their national policy objectives, considering a series of domestic as well as international legal constraints. They also show a preference for high-skilled migrant workers, because they are expected to bring more complementarities with the capital and the skills of the current population, because of eventual long-term economic growth implications, and because skilled migrants employed in high-skilled jobs pay more taxes and are eligible for fewer welfare benefits than low-skilled migrants in low-skilled jobs (Ruhs, 2013).

This paper argues that we need to emphasize ratification also, not only compliance. We cannot complain
about compliance if we do not take ratification seriously or lessen its importance.

3. Human rights and labor migration issues versus the issues in the automobile industry: A comparative analysis

To perform such analysis and facilitate understanding, a few paradigm shifts are paramount. Indeed, we will need to imagine that legal instruments are products, that states are the customers and the consumers, and finally that ratification will be seen as buying. The institutions in charge of making and promoting treaties will be referred to as treaty-makers. These attempts stem from the managerial approach of Chayes and Chayes, widen its scope, and bring it a step further. These allow us to consider more aspects of management in the analysis, more particularly, product management. It is worth noting briefly that seeing states as customers should not be surprising because many theories about state compliance are imbued with customer behavior like considerations. Other authors have previously paved the way for the equating treaties to products analogy. In marketing, for instance, it is quite common to consider any thing as a product.

The Dictionary of Marketing Terms (AMA, 1995) defines product as: “a bundle of attributes (features, functions, benefits and uses) capable of exchange or use; usually a mix of tangible and intangible forms. Thus, the product can be an idea, a physical entity (a good) or a service, or any combination of the three”. For Thomke (2007): “the product is an idea, with some assumptions about how it can be realized”. Wind (1982) also support the idea that many things can be considered as products: governments programs as well as the products and services of non-profit organizations, university programs, cultural events etc. Whether tangible or intangible, they can all be considered as “products” requiring development and marketing to “appeal to a target segment”.

In international law, authors also use the term products to refer to the international instruments. For example, Falk (1981, p.138) in his study about human rights and state sovereignty argues that the Universal Declaration is the product of international negotiation, widely endorsed and evoked as authoritative in all parts of the world. Also, Henkin (1990, 1988 reprint of 1978 ed.), analysing the origins and antecedents of the rights of man, asserts that the conception of human rights as the legal and political claims of individuals, involving obligations as well as limitations on governments and societies, is a product of modern history. In his book titled How Nations Behave, Henkin explains that protected by the principle of unanimity, governments can participate in the law-making process without any commitment to adhere to the final product. Poirat on her side, decided to use the concept of legal product. The latter has been used in previous years for different purposes by Reuters, and Kelsen for contract law related considerations.

This article contends that the legal instruments evolve in an environment similar to that of many complex products and processes in general. Such environment, according to Wheelwright and Clark (1992), is characterized by many factors such as competition, uncertainty, unforeseen problems, the arising of new circumstances that challenge the validity of even very basic assumptions, and so on. This situation increases the complexity of product development and makes the product design and development very challenging. If the actual labour migration policies environment and states behaviours toward high-skilled and low-skilled migrants are taken into considerations, those challenges become obvious. Indeed, on one side, states are competing among themselves to attract more high-skilled migrants. They showed incredible creative ability to design very competitive policies. On the other side, they try to find thousands of ways to leave the low-
skilled behind. In this sense, many high-income countries are developing robots to avoid low-skilled migrants completely. This can impact the willingness of states to ratify conventions. Therefore, there is an undeniable need for product management which encompasses planning, development, and performance to protect the rights of the migrant workers.

The auto industry is characterised by very complex products: cars. Indeed, few products are as complicated in structure, adversities, and the uncertainties they face in the market. Thousands of functional components involving many production steps compose an automobile and the project of car development is long lived and requires the participation of thousands of people over several months (Clark & Fujimoto, 1991). In addition, changing markets, multiplicity of choices, competing objectives, and inherent ambiguity in products evaluation by customers etc., all complicate planning, design and development of cars in the automobile industries (Clark & Fujimoto, 1991).

Product planning, in itself, involves a complicated set of trade-offs among concept, specification, cost targets, and component choice, which make achieving internal and external consistency a real challenge (Clark & Fujimoto, 1991). For instance, “planning a new car is like trying to solve a huge simultaneous equation system”. At this stage, difficult negotiations and, specifically, organizational conflicts are unavoidable. Indeed, the height of the engine hood in the family sedan was a major battlefield; designers and concept leaders could not agree since some wanted it low and others wanted to push it up. In addition, in many other areas there were conflicts involving engineers, designers, product managers, testers, controllers, and so on. Close coordination and communication are therefore central to a high level of internal and external consistency at the end of product planning (Clark & Fujimoto, 1991). Although the network of trade-offs and web coordination among all the different aspects of a vehicle are complex, car makers have to face the challenge of achieving total vehicle integrity, both internal and external. They have to optimize simultaneously specifications, targets, component choices, and so on. Clark and Fujimoto (1991) concluded that effectiveness at this stage requires product-customer orientation, leadership, intensive coordination, concept leadership, and intensive communication.

The automobile industry related problems explored below is not far from the complexities international law has to deal with on a regular basis. Indeed, Henkin (1979) noted that since the end of the Second World War it has been hard to come up with new laws and old laws have been unmade. Moreover, many questions that used to be decided by law, fall now under national policy matters and are decided unilaterally. He added that international adjudication is not an important force in international life and nations tend to promote their interest by political accommodation, influence, compromise, and negotiation. Relations among nations became the domain of diplomacy between representatives of nations promoting national policies (Henkin, 1979). Law, force, and diplomacy have coexisted in international history, fluctuating depending on times, contexts, and so on (Henkin, 1979). Boyle and Chinkin (2007) argued that the use of consensus negotiating techniques considerably advances the formation of new law and international conferences; what they see as a strange way to law-making, is usually about compromises and negotiation. Such consensus negotiating procedures generate an important need for engaging in diplomacy, listening and bargaining, etc. Consensus law-making, however, is said to have some drawbacks in spite of its benefits.

The 1990 UN Convention on Migrant Workers and their Families is a big example of complex product. It is targeting distinctive market segments in a complicated and adversarial environment. Its customers are
very complex and sophisticated in the same ways as car customers in a global and competitive world. On one side there are the receiving countries, and on the other, the sending countries; two segments with different needs and wants or priorities. It is worth noting however that a UN study mentioned in 2016 that international migration started to touch all the corners of the earth, since modern transportation made it easier and cheaper to move, making this distinction between countries of origin, transit, and destination obsolete (UN, 2016). In any case, they indicated that more than two thirds of the world’s migrants lived in High-income countries representing as of 2015 about 71% of the worldwide migrant stock. It is, therefore, a complex market that the international organizations have to handle.

In fact, treaties are made by government officers on behalf of states. Head of states or heads of government, and Ministers for Foreign Affairs, are considered as having plenary competence to enter into commitments on behalf of a state in any matter (Lowe, 2007). The treaty-making process involves the participation of a delegation of officials from various ministries concerned with the subject matter of the treaty, accompanied by representatives of NGOs and of representatives of the related industry, attending the drafting conference (Lowe, 2007). Lowe explained how after days debating drafts in the conference room and negotiating in smaller groups in the coffee lounges, the delegates settle on the text that commands the highest level of acceptance. They sign the negotiated text to authenticate it. Not all treaties enter into force after signature. The next step will then be ratification. The ratification process varies from country to country, depending on the requirements of their respective constitution. Although procedures differ greatly, all state will take sufficient time to consider the impacts of an eventual acceptance or rejection of the treaty (Lowe, 2007).

“Treaties are bargain struck by those who negotiate them on behalf of the state” (Lowe, 2007). The period between signature and ratification allows government to decide whether or not the bargain is good enough. They will then ratify or leave it as a dead letter, unratiﬁed. Lowe continues on to explain that, in the case of bilateral treaties, the possibility of non-ratification is lower than in the case of multilateral ones. The negotiators of multilateral treaties are thus expected to do their best to achieve a consensus. However, it is very difficult to come up with a text that is wholly acceptable to everyone. At this point says Lowe a policy choice arises where the states can only accept the negotiated treaty as is, or leave it. Or they might have the alternative of ratifying the treaty, accepting some of its provision and excluding some others. The dilemma is that the first option would preserve the integrity of the treaty because it would not allow modification, but many states might choose to remain outside of the treaty. The other option is to allow state to modify the treaty accepting some of the provisions. This, called reservation, give a state the opportunity to excludes or modify the legal effect of certain provisions of the treaty in their application to it. The acceptance of reservations, as stated by Lowe makes it easier for states to become parties to the treaty. However, if this expands the number of members, the integrity of the treaty is affected. As a result, not all states will be bound by the same set of rules lamented Lowe. This is unfortunately not the only problem that might arise. The final document might be so weak in terms of real effect and value.

To make a long story short, both car-makers and the treaty-makers have to face similar issues related to product planning, and product development. Both cars and legal instruments have to face adversarial environment and many challenges. In both fields, concerns related to product architecture, concept integrity, and so on are recurrent. They are all complex products but car- makers have overcome some difficulties that the treaty-makers are still struggling to solve. Therefore, it is worth learning from car manufacturers to
improve the treaty creation process and move to the next level.

4. Learning from the automobile industry

Honda is usually cited as an exemplary example of product development strategy that is coherent and which can inspire. In the 1990s, Honda had to face the challenge of meeting different demands in distinctive and diverse markets segments and regions, and developing products that should be at the same time suitable for the local and the global market facing fierce competition in terms of cost and quality. However, they found ways to move from niche player to full line producer (Wheelwright & Clark, 1992). Their experience illustrates the fact that continuous success in product development can be reached by giving more attention to the pre-project planning, linking technical strategy to the aggregate plan of the product project, and adopting a leadership and organizational approach that facilitate the fulfilment of the market needs. This calls for innovative, distinctive product offerings that can lead to the creation of an attractive and coherent image (Wheelwright & Clark, 1992). One more thing to note is that not all the Honda's products development has been successful, but they quickly learned from each failure. This is also a significant aspect of successful product development. However, this is not all.

In the foreword of his book, Competing to be really, really good: the behind-the-scenes drama of capability-building competition in the automobile industry, Prof. Fujimoto argued that capability-building has been a notably decisive factor in competitiveness in the automobile industry and that the experience of Japan's automakers, including their mistakes offers numerous lessons of tremendous value for companies in every industry. Of course, as he recognized it himself, it should not be a copy-paste exercise; each industry has to take into account its uniqueness.

Capability-building is a step-by-step process resembling the evolution process in biology (Fujimoto, 2007). It is also, among other things, about making things, making improvement, making progress, and evolving consumers and so on. This process of making things is very complicated whether it is a car or a treaty. In the car industry they call it designing, and the results of this design is called artefact. Product architecture is important because of its complexity and its implications in the future on the evolution and success of the final product. The automobile industry has found a way to deal with it in order to get well-designed products. According to Chayes and Chayes (1995), the treaty is necessarily a compromise, so if the agreement is well designed, comprehensible and sensible, with practical eyes to foresee possible scenarios of interactions and conducts, issues related to compliance and enforcement could be manageable (Chayes and Chayes, 1995). However, they did not explain how to design better agreement in order to ensure such results but they continued to say that if problems that have to do with compliance and enforcement are endemic, it is eventually because the range of parties' interests incorporated during the negotiation process was not broad enough (Chayes and Chayes, 1995). This being said it is relevant to examine product architecture. Good lessons can be learned from the automobile industry to address these issues and achieve well-designed agreements which have more chance of first getting ratified and then being complied with.

Fujimoto described architecture of a product or a process or an artefact in general, as the formal or abstract pattern of dividing and reconnecting the artefact's functional, structural and process design elements. He said that the two most basic types of architecture, the integral type and the modular type could be distinguished, and that most of the products and processes in the real world could be positioned along the spectrum between
the two extremities of pure modular and pure integral types. Above is the architecture of the ILO convention no 143 on Migrant workers. It will be analysed following the information provided by Fujimoto (2012) about product architecture and coordination.

In Figure 1, the ILO convention of 143 reflects a rather modular type of architecture. P means Part. According to the operating instructions provided in Part 3 (P3), Convention 143 has three parts, two of them (P1 and P2) are made optional. Part I was conceived to protect migrants against abusive conditions, and Part II to ensure MBA, which means multilateral and bilateral agreements by states. P1 ensures the functions of providing protection against migrations in abusive conditions (MAC), and P2 ensures equality of opportunity and treatment (EOT). Those two sub-functions are essential to the overall function protection of migrant workers (PMW).

The introduction provided on the ILO website (NORMLEX) states that the instrument: “C143, Migrant Workers Convention 1975, Concerning Migration in Abusive Conditions (P1) and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (P2), entry into force on 09 December 1978, adoption: Geneva, 60th ILC session (24 Jun 1975), Status: up-to-date. Instrument: technical convention...” If this part is examined more carefully, one can easily see that Part I and Part II are the real key parts of the convention since they reflect the product concept and the main purpose of the convention, and they contain important
component enabling rights protection and standard dispositions existing in other conventions.

Indeed, Part I talks about the respect of basic human rights (Article 1). Its Article 8.2 states that regular migrant workers should enjoy equal treatment in terms of security of employment and retraining. It says that those workers should not lose their legal status due to loss of employment. In part II, Article 12 provides instructions related to implementation and enforcement. It says that the member states should by methods appropriate to national conditions and practice seek cooperation of relevant organizations and bodies to promote the acceptance and observance of the policy explained in Article 10, which states that countries in which this article enters into force shall pursue a national policy designed to promote and guarantee equality of opportunity regarding the employment and occupation, social security, trade union and cultural rights, and individual and collective freedom of regular migrant workers. Article 12 (d) also mentions that the state should repeal any statutory provisions and modify any administrative practices or instructions that are inconsistent with the policy. Article 12 (g) states that dispositions should be taken to guarantee equality of treatment regarding working conditions, for all migrant workers who perform the same activity.

As can be seen, Part I and Part II protect rights; some of them are fundamental rights, without which the migrant workers would be in a vulnerable position. Removing them would affect the overall function of protection. Moreover, the measures regarding implementation and enforcement are given in Article 12 of Part II, so making this part removable also affects the convention in that it undervalues the importance of taking steps to implement and enforce migrant workers’ rights. There is no wonder why there are compliance issues with the international instruments. Thus, Part I and Part II cannot be excluded without affecting the convention in itself.

ILO ended up opting for this rather modular type of legal instrument obviously because of customer (i.e., the states) preferences; concern over coordination costs, and the adversarial environment of the market since integral architecture would lead to higher workload. In fact, the market is rather mixed, organizational coordination cost also would be higher since conventions are complex products and market and social restrictions are numerous. Indeed, market and social restrictions weigh heavily in the balance. Falk (1981) explained that the geopolitical realities, system patterns such as imperial sphere of influence, organizational fragmentation, and complex network of transnational social, cultural and economic forces would be a hindrance to rights promotion, which depends on the interplay between normative standards and social forces involved in their implementation and the struggle between these opposed forces occurring at the state level within governmental bureaucracies. As Fujimoto (2012) explained it, the choice of a given product’s architecture depends on customer preference patterns whether it is modular or integral, or even a mixed form, helps explain the choice of the law-makers with the conventions. The main argument of Fujimoto is that social and market restrictions determine architectures. Indeed, for some categories of products the chosen architecture varies following the market needs, on whether customers focused on price or on function. He concludes that the customers who are function-oriented are more willing to pay large premiums for product overall functional performance, for product integrity.

In few words, the lesson here is that whether the architectural type is modular or integral, the product concept has to be protected. In the ILO convention analyzed previously, it was not protected, and the core components where unduly sacrificed, thus compromising the final product. There is not a problem per se in the choice of the modular type; as the experts mentioned, both the modular and the integral types of architecture,
have their advantages and disadvantages, and each is more appropriate than the other in certain cases. In the car industry, where the complexities of the negotiation process among the different sectors involved, the key people recur to tremendous leadership and upfront problem-solving skills, among other things to harmonize it all.

The point is that some parts in the convention are key, sacred and should not be “removable” part of the product. As a matter of fact, Clark and Fujimoto (1991) argued that the strategy consisting of using old parts and borrowing parts from other models in order to create new models dates back at least to the 1920s, when GM introduced for the first time its full-line policy with closed bodies on a mass-production basis. “This industrial group under Harley Earl was centralized to facilitate body parts commonality across GM models and hold down soaring body tooling costs”. They also noted that building a car from all new unique parts is a strategy that has an even longer history. In the competitive environment of the 1980s, the issue was what mix of those strategies to employ on a particular product, how much “off-the-shelf”. The choice could significantly impact quality of design, time to market and engineering productivity. In short, bringing novelty in the product is welcome, and trying out including some flexibility in the supply chain is not a problem either, as soon as the standard elements, the key components do not get dislocated. They are the baseline features of the product. The law-makers should try their best to always remember that.

Niefer (1994) argued manufacturers must do their best to make a brand attractive and convincing and to avoid anything that does not suit the desired image of the brand. The brand is the most valuable asset owned by a company and its fate lies with the brand, so full commitment to the brand is crucial. For instance, Niefer explained that Mercedes-Benz’s brand customers expect their individual needs to be fulfilled in a way compatible with social responsibility. Benz, therefore, follows two brand objectives with equal priority: first, they want to embrace flexibility in responding to the needs, and wishes of customers throughout the world and, second, they play an important role in providing fundamental values such as quality, safety, reliability, and accepting joint responsibility for motor-related problem-solving.

Niefer (1994) asserted that the automotive industry could not afford to overlook the desire for individual freedom and the need to be eco-friendly. Mercedes Benz, for example, realized that they had to contribute effectively in the fight to solve environmental and traffic problems while preserving the mobility for the customer. However, this is not all; the new market realities that all motor manufacturers have to cope with also include maintaining an edge in technology, and cost efficiency to provide a distinctive product to the customer, and also those manufacturers must also reduce costs but maintain quality and innovation at competitive prices (Niefer, 1994). The market of the automobile world has long been in a state of considerable flux, and it seems that such a state will still be the case for the coming years. Niefer reminded us that the only certainty that prevails is that nothing can be taken for granted in such a market, which is highly complex, and governed by more than a mere relationship between the consumers’ wishes and the quality of the products supplied. The primary issue that motor producers have to face is how to build cars which make others happy and satisfied and this is according to Niefer where branding plays a powerful role. Indeed, as he explained, because the different brands in each market segment broadly match each other in terms of quality, technological standards, design, and so on; it is difficult for manufacturers to clearly differentiate themselves and define outstanding features for their brands. They have to face what they called the “Japanese challenge”, which is an important issue for motor manufacturers both in the USA and in Europe; the environmental protection challenge, and the
sophisticated taste of customers who want more uniqueness, exclusivity, and special features.

Moreover, many factors outside the normal market dynamics of supply and demand influence the automobile market. Such factors include, among other things, state assistance for exports and the state import restrictions; customs, duties, and taxes on fuel and cars; levies on passenger cars; the general economic situation; and private disposable income. Disposable income affects both the disposition of the consumer to buy and the ability of the manufacturers to be flexible on the price, the tradition and the underlying culture and attitudes of the manufacturer, which are often underestimated as factors influencing the ability to respond to change, without forgetting the regulations related to construction and registration, which makes the job of the manufacturer more complex and uncertain (Niefer, 1994).

Mercedes Benz's philosophy is competence without being cold or arrogant, genuine concerns for customers, and a wish to satisfy their requirements without departing from the fundamental values of the Mercedes Benz brand (Niefer, 1994). The fundamental values of the Mercedes Benz brand, the qualities that first come to people's minds when they are asked about Mercedes Benz, are: quality, safety, reliability, forward-thinking technology, and eco-friendliness (Niefer, 1994). The company tries to maintain these standards above the competition so that they do not overtake them in the 170 countries where Mercedes-Benz vehicles are sold and driven (Niefer, 1994). Moreover, they try to give those fundamental values an extra sparkle by adding to them the extra contemporary qualities and values customers long for, such as up-to-date design (both exterior and interior), sportiness, comfort, and so on; they also established a care and system service to increase the customers' experience in terms of enjoyment, benefit, and relief from maintenance burden (Niefer, 1994). Customers expect a leading brand to offer the best the industry can produce currently and the promise of direction for the future, Mercedes Benz meets these objectives, concluded Niefer (1994), and the company recognizes five factors that can influence the success of a brand: product, production, service, motivation, and communication.

Regarding the product factor, it has to do with research, development, and design of the whole product range as well as individual products. Mercedes-Benz was the first car manufacturer to be able to fit its vehicles for the German market with catalytic converters as a standard feature, and the durable high-performance closed-loop catalytic converters are now capable of purifying the exhaust emissions to an extent greater than what law requires (Niefer, 1994). Future product innovations will also take the same direction, which means towards; safety, environmental compatibility, fewer demands on the driver, etc. (Niefer, 1994).

Satoshi Hino (2006) emphasized the importance of product power and brand power in Toyota. He said that the propensity to sell can be defined as the result of product power \( \times \) brand power. He noted that no matter how strong is the power of the product, it will not sell well if the brand is weak.

So many lessons remain to be learned for the international instruments related to labour migration. They also have to evolve in a market full of challenges. Similarly, to the automobile industry, they can face the hurdles and build a "brand power". Even if they face controversial issues, they can overcome them, and achieve their goals.

5. Expected results and impacts

In the automobile industry Japanese car manufacturers have been particularly robust and resilient. Japanese automakers emerged as world leaders in the latter half of the 20th century. However, at the beginning
they had to face severe trials. To cope with the challenges, Fujimoto (2003) stated that companies like Honda and Toyota, summoned sufficient fortitude in their manufacturing, product development and other core functions. The US and European automakers also had some down moments, but eventually, they could regain high performance. The sectors in charge of human rights and labor migration issues are expected to do the same. No matter how gloomy the situation is currently, they can learn from the experience of the automakers and turn things around.

Competition and conflicts in the market, led to collaboration between the Japanese and US and European automakers. From the mid-1980s to the early 1990s, the world’s automakers engaged in several types of cooperation in RD, production, marketing. Through multiple collaborations, the automakers could supplement their competence at different level such as corporate strategy, long-term product planning, research and development, distribution and marketing. This cooperation fortified their capabilities in every phase of value generation (Fujimoto, 2003). For instance, Renault was developing automatic transmission with Volkswagen and diesel engines with Fiat. That European automaker was also cross licensing parts with British Leyland while doing joint research and development, and joint production with Volvo. To increase treaty creation efficiency, the International Organizations such as ILO could develop such cooperation with IT companies, to conduct joint R&D, software development and computer-assisted product development.

Shachar (2011) explained how states could get really creative when it comes to picking winners for Olympic Games. As a result, while states refuse even mere entrance to many categories of people, and even limit the ability to stay, in their desire to strengthen their national team and gain medals, states grant citizenship as they and when they wish, no matter the national obstacles, transforming migration laws into a multilevel game for national policymakers (Shachar, 2011). This reveals many things regarding the profile of the state as a customer and should not be taken lightly. Effective product management requires that companies know the customers really well. In order to do so, we need to capture their profile and understand their real needs. This calls for behavioural studies, but it requires also the integration of such findings on the final products. Moreover, since customers, whether they are states or people, sometimes, are unaware of what can solve their problems and meet their needs. Additional work is paramount to create a good value combination to surprise them. Outstanding product development includes, among other things, anticipating the needs of future customers and making continuity in offerings, conceiving a product that will be effective in the market place several years later, strong leadership, internal integration and customer needs integration, strong collaborative relationship, shared-responsibility for the performance of the product and an appreciation of the added-value by each group (Wheelwright & Clark, 1992).

The lessons learned from the automakers can help with treaty creation so that it can be as successful as possible. Ratification, the normal step before compliance can become achievable. The ratification issues have reached a point where many states do not want to talk about them anymore because they lose hope on its feasibility. It can help in addressing the scepticism of the states towards international organization. It is also useful at the foundation, which is the norm level to provide a package combining well- designed treaties, with good technical support and improving the overall experience of the states as well as the organizations with the treaties. Product power and brand power can become a reality.

Other expected impacts of learning from the experience of world automakers could be summarized as follows:
—Endow policy makers and international organizations with strategies to remain competitive against other international and global players.
—Advance our understanding on how an unexplored approach can have potential influence on international collaboration and performance.
—Help understand how institutions can facilitate change or can hinder it.

6. Conclusion

How can treaties be optimized to better address human rights and labor migration issues?

In few words, treaties can be optimized by gaining in competitiveness, which as Fujimoto (2003) states, means the ability to survive at rival’s expense. Competitiveness is also being effective in satisfying customers and attracting new purchasers. According to Fujimoto (2003), a sound combination of both will surely bring lasting competitiveness. Even if their owners love the products, if the problem related to their inability to attract new purchasers is not addressed, such products will be marginalized in the marketplace. There are sometimes discrepancies between the product appeal to their owners and their appeal to customers. The fact that the latter was involved in the creation process does not reduce the discrepancies because as one expert put it, sometimes, even though the customers are becoming increasingly sophisticated and demanding, they do not really know what can bring them satisfaction. This is additional work for the Research and Development team of companies who drive productivity.

Such productivity requires also that the firm undertake some fundamental changes in its organization, process layout. Organizational capabilities involve the ability to create things of high quality in short time for evolving customers. The key, as demonstrated by the automakers, is to strive to achieve high performance, design and brand identity. In other words, simplifying design and, developing and strengthening brand identities. The challenge now, for the treaty makers trying to address human rights and labor migration issues, is to develop "models" distinctive enough to fire the imagination of the state-consumers. Technology can be harnessed to move towards that goal.

Abbott (1989) explained that modern theory could help better understand the creation or supply of international norms, regimes and institutions in three ways: by the study of the structural conditions that facilitate cooperation, by the study of the techniques employed by states to reach compliance and cooperation under existing conditions, and by the study of the strategies states use to modify conditions and increase the possibilities for cooperation, changing payoffs, increasing the quality of available information, and linking regimes. It is about time to try to construct a modern theory which not only makes analysis and understands all the concerns raised by Abbott, but also considers much more, and gets betters results.

References


